

JUDGE LYNCH

08 CV 7151

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

Covidien AG and Tyco Healthcare Group LP)
d/b/a "Covidien,")

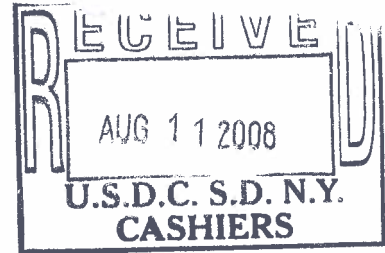
Plaintiffs,)

v.)

CapitalSource Inc.)

Defendant.)

Case No.



JURY TRIAL DEMANDED

COMPLAINT

Covidien AG and Tyco Healthcare Group LP d/b/a "Covidien" (collectively, "Covidien") bring this action for trademark infringement, trademark dilution, and unfair competition against CapitalSource Inc. ("CapitalSource") and allege as follows:

NATURE OF THE ACTION

1. This is an action in which Covidien asserts Federal and State causes of action based on CapitalSource's infringement of Covidien's trademarks as follows: Count One: infringement of a registered trademark in violation of the Lanham Act, 15 U.S.C. § 1114; Count Two: federal unfair competition in violation of the Lanham Act, 15 U.S.C. § 1125(a)(1)(A); Count Three: trademark dilution under New York law, NEW YORK GEN. BUS. LAW § 360-L (McKinney's 2008); and Count Four: common law unfair competition.

JURISDICTION

2. This Court has original jurisdiction over Counts One and Two under 28 U.S.C. § 1338(a) and 28 U.S.C. § 1331 because they arise under the laws of the United States, namely, the Lanham Act, 15 U.S.C. § 1051 *et seq.*, which is an Act of Congress relating to trademarks and unfair competition.

3. This Court has supplemental jurisdiction over Counts Three and Four under 28 U.S.C. § 1367(a) because they are claims so related to claims in this action within the Court's original jurisdiction that they form part of the same case or controversy under Article III of the United States Constitution.

PARTIES

4. Tyco Healthcare Group LP is a limited partnership doing business as "Covidien" ("Covidien USA"). Covidien USA is a healthcare company with its principal place of business at 15 Hampshire Street, Mansfield, Massachusetts 02048.

5. Covidien AG is a Swiss corporation with its principal place of business at Victor von Bruns-Strasse 19, Neuhausen am Rheinfall 8212, Switzerland.

6. Covidien USA is the exclusive U.S. licensee with respect to various trademarks featuring the Covidien Brackets that are the subject of this Complaint (collectively, the "Covidien Marks"), as discussed below.

7. Covidien offers an extensive product line that spans medical devices, pharmaceuticals, and medical supplies. Covidien serves healthcare needs in hospitals, long-term care, and alternate care facilities. Over the years, Covidien has pioneered a number of medical advances.

8. Covidien also has a venture capital arm called "Covidien Ventures," focusing on early-stage investments and emerging technologies in the healthcare industry. Covidien Ventures targets companies producing innovative new technologies and those conducting research and development for new healthcare products. A formal announcement of Covidien Ventures is expected before the end of August 2008, though its hiring and branding have been underway for some time.

9. On information and belief, CapitalSource is a Delaware corporation with its principal place of business located at 4445 Willard Avenue, 12th Floor, Chevy Chase, Maryland 20815. CapitalSource also has a substantial presence in New York City, including an investment office at 640 Fifth Avenue, 11th Floor, New York, NY 10019.

10. On information and belief, CapitalSource is a commercial lending and investment management company that invests in companies in the healthcare industry. On information and belief, one of CapitalSource's three main business units is the Healthcare and Specialty Finance Business group. This unit of CapitalSource manages numerous investments in the healthcare industry including, on information and belief, investments in hospitals, physicians' offices, pharmacies, and nursing homes. On information and belief, CapitalSource and its subsidiaries and partners own multiple skilled nursing and assisted-living facilities.

11. On information and belief, CapitalSource also operates a Healthcare Real Estate Investment Trust (REIT), which invests primarily in health care related facilities, including long-term care facilities to which Covidien sells its products.

COVIDIEN'S VALUABLE TRADEMARK RIGHTS

12. Since it was spun off from Tyco International in or about June 2007, Covidien has made a significant investment of time and money to develop the Covidien brand. Covidien's investment in advertising, collateral, and other branding activities amounts to tens of millions of dollars. Covidien's marketing strategies have included print advertising in major media, as well as sports and event advertising and sponsorships.

13. A distinctive and unique centerpiece of Covidien's branding efforts is the Covidien Brackets:



The Covidien Brackets are featured in the vast majority of Covidien communications, including print advertising, collateral materials, press releases, and company signage.

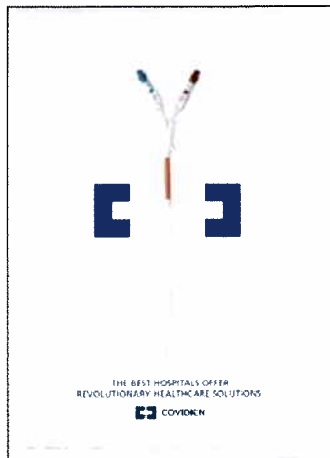
14. So central are the Covidien Brackets to the company's brand identity that giant Covidien Brackets sit prominently near the entrance to the company's headquarters in Mansfield, Massachusetts:



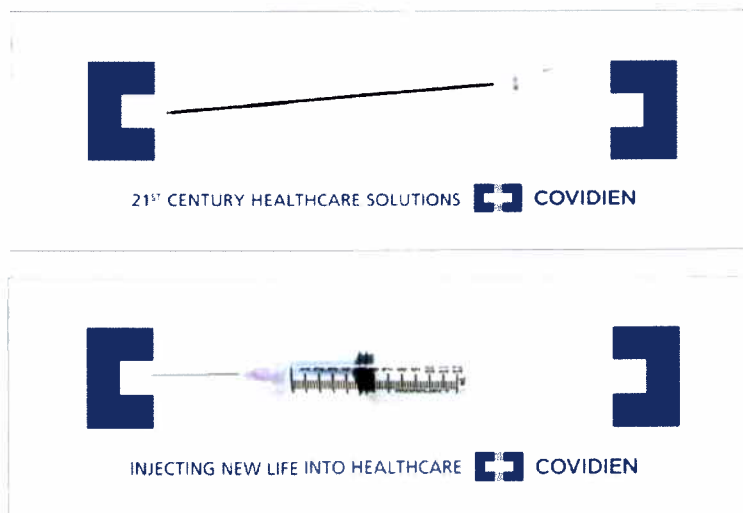
15. The Covidien Brackets also sit at the entrance to the company's offices near St. Louis, Missouri:



16. Covidien's communications consistently emphasize the Covidien Brackets. For example, the following advertisement, attached as Exhibit A, appeared in U.S. NEWS & WORLD REPORT:



17. The advertisements depicted below, and attached as Exhibit B, appeared as urban panels throughout the streets of New York City:



18. Since the beginning of the 2007 baseball season, Covidien has sponsored a large advertisement displaying the Covidien Brackets on the “Green Monster,” the left field wall in Fenway Park, where the Boston Red Sox baseball team plays:



19. Covidien AG has applied for, and the United States Patent and Trademark Office has awarded, federal trademark registrations for marks including the Covidien Brackets. For example, Covidien AG is the owner of U.S. Registration No. 3,398,203, shown below and attached as Exhibit C:



20. The Covidien logo featuring the Covidien Brackets is also the subject of pending applications for registration in the U.S. Patent and Trademark Office. Application Serial No. 77235145, shown below and attached as Exhibit D, claims a priority date of January 23, 2007. The U.S. Patent and Trademark Office recently approved this application for publication and is expected to grant a registration shortly.



21. The Covidien Brackets are a strong trademark for Covidien—a distinctive symbol which the public recognizes and uniquely associates with Covidien. The Covidien Brackets are a critical cornerstone of Covidien's identity and current and future marketing success and embody Covidien's unique brand and goodwill.

22. By virtue of the widespread dissemination and public awareness of the Covidien brand generally and the Covidien Brackets specifically, as well as the trademark registrations and applications that include them, CapitalSource had constructive and, on information and belief actual, notice of the Covidien Brackets and the goodwill that they embody for Covidien.

CAPITALSOURCE'S TRADEMARK INFRINGEMENT

23. Beginning within the last few weeks, CapitalSource launched an entirely new brand identity with a major marketing splash, in this District and elsewhere. The apparent centerpiece of CapitalSource's new identity is a logo that is a confusingly similar knockoff of the distinctive Covidien Brackets:



24. Before CapitalSource introduced its copycat brackets logo, on information and belief, CapitalSource used a logo that was very different from the Covidien Brackets, as depicted here:



25. CapitalSource's marketing blitz with its new and confusingly similar brackets logo included a quarter-page ad in the WALL STREET JOURNAL on July 29, 2008, which prominently featured the new CapitalSource brackets at the top of the page. A true and correct copy of this ad is shown below and is attached as Exhibit E.



26. CapitalSource's new knockoff logo on the left is undeniably confusingly similar to the Covidien Brackets on the right:



27. CapitalSource's prominent and widespread use in interstate commerce of a logo so substantially similar to the Covidien Brackets on related goods and services in similar channels of trade is likely to cause confusion as to source, affiliation, or sponsorship with Covidien.

COUNT I

FEDERAL REGISTERED TRADEMARK INFRINGEMENT

28. Covidien repeats and realleges the allegations in paragraphs 1 through 27 as though fully set forth herein.

29. U.S. Registration No. 3,398,203 is valid, enforceable, and in full force and effect. U.S. Registration No. 3,398,203 is prima facie evidence of the validity of the registered mark and of the registration of the mark, of Covidien AG's ownership of the mark (which it has exclusively licensed to Covidien USA in the United States), and of Covidien USA's exclusive right to use the registered mark in commerce on or in connection with the goods or services specified in the certificate, subject to any conditions or limitations stated in the certificate. 15 U.S.C. § 1057(b).

30. CapitalSource is using in commerce a design that is likely to cause confusion, or to cause mistake, or to deceive as to source, affiliation, or sponsorship in violation of the Lanham Act, 15 U.S.C. § 1114.

31. Covidien has been and will continue to be damaged by CapitalSource's infringement in an amount to be determined at trial.

32. On information and belief, CapitalSource's conduct is willful, deliberate, intentional, and in bad faith, making this an exceptional case.

33. By reason of the foregoing acts, CapitalSource has caused, and unless enjoined will continue to cause, irreparable harm to Covidien. Covidien has no adequate remedy at law.

COUNT II

FEDERAL UNFAIR COMPETITION

34. Covidien repeats and realleges the allegations in paragraphs 1 through 33 as though fully set forth herein.

35. Covidien has common law rights in the distinctive Covidien Marks, which are uniquely associated with Covidien as the source of the products and services used in connection the Covidien Marks.

36. CapitalSource is using in commerce a design that is likely to cause confusion, or to cause mistake, or to deceive as to source, affiliation, or sponsorship in violation of the Lanham Act, 15 U.S.C. § 1125(a)(1)(A).

37. Covidien has been and will continue to be damaged by CapitalSource's infringement in an amount to be determined at trial.

38. On information and belief, CapitalSource's conduct is willful, deliberate, intentional, and in bad faith, making this an exceptional case.

39. By reason of the foregoing acts, CapitalSource has caused, and unless enjoined will continue to cause, irreparable harm to Covidien. Covidien has no adequate remedy at law.

COUNT III

DILUTION UNDER NEW YORK LAW

40. Covidien repeats and realleges the allegations in paragraphs 1 through 39 as though fully set forth herein.

41. The Covidien Marks are distinctive of Covidien's products and services.

42. CapitalSource is using in commerce a design that has diluted, and will likely continue to dilute, the distinctive quality of the Covidien Marks in violation of New York's Anti-Dilution statute. NEW YORK GEN. BUS. LAW § 360-L (McKinney's 2008).

43. Covidien has been and will continue to be damaged by CapitalSource's actions in an amount to be determined at trial.

44. On information and belief, CapitalSource's conduct is willful, deliberate, intentional, and in bad faith, making this an exceptional case.

45. By reason of the foregoing acts, CapitalSource has caused, and unless enjoined will continue to cause, irreparable harm to Covidien. Covidien has no adequate remedy at law.

COUNT IV

COMMON LAW UNFAIR COMPETITION

46. Covidien repeats and realleges the allegations in paragraphs 1 through 45 as though fully set forth herein.

47. CapitalSource is using in commerce a design that is likely to cause confusion, or to cause mistake, or to deceive as to source, affiliation or sponsorship with the Covidien Marks in violation of the common law of unfair competition of the various states, including New York.

48. Covidien has been and will continue to be damaged by CapitalSource's infringement in an amount to be determined at trial.

49. On information and belief, CapitalSource's conduct is willful, deliberate, intentional, and in bad faith, making this an exceptional case.

50. By reason of the foregoing acts, CapitalSource has caused, and unless enjoined will continue to cause, irreparable harm to Covidien. Covidien has no adequate remedy at law.

PRAYER FOR RELIEF

WHEREFORE, Covidien respectfully requests that this Court:

A. Enter judgment that CapitalSource has violated Lanham Act, 15 U.S.C. §§ 1114 and 1125(a)(1)(A); the New York State Anti-Dilution Statute, NEW YORK GEN. BUS. LAW § 360-L; and the common law of unfair competition.

B. Preliminarily and permanently enjoin CapitalSource, its officers, directors, agents, employees, attorneys, successors, and assigns, and all others in active concert or participation with any of them, from directly or indirectly engaging in any further trademark infringement and dilution and from competing unfairly with Covidien;

C. Order CapitalSource to pay Covidien:

1. All profits, gains, and advantages obtained by CapitalSource from its unlawful conduct;

2. All monetary damages sustained and to be sustained by Covidien as a consequence of CapitalSource's unlawful conduct, including lost profits and corrective advertising damages, in an amount to be determined at trial;

3. Exemplary damages;

4. Covidien's costs and disbursements in this action, including its reasonable attorneys' fees; and

D. Award Covidien such other and further relief as the Court deems just and proper.

DEMAND FOR JURY TRIAL

Pursuant to FED. R. CIV. P. 38(b), Covidien respectfully demands a trial by jury of all issues triable by a jury.

Dated: August 11, 2008

Respectfully submitted,

A handwritten signature in blue ink, appearing to read 'A. Schechter', is written over a horizontal line.

Aaron J. Schechter (AS1282)
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Counsel for Plaintiff

Exhibit A



THE BEST HOSPITALS OFFER
REVOLUTIONARY HEALTHCARE SOLUTIONS.



COVIDIEN

positive results for life

Exhibit B



21ST CENTURY HEALTHCARE SOLUTIONS  COVIDIEN



INJECTING NEW LIFE INTO HEALTHCARE



COVIDIEN

Exhibit C

Thank you for your request. Here are the latest results from the [TARR web server](#).

This page was generated by the TARR system on 2008-08-11 13:22:46 ET

Serial Number: 77233857 [Assignment Information](#) [Trademark Document Retrieval](#)

Registration Number: 3398203

Mark



(words only): [C C COVIDIEN](#)

Standard Character claim: No

Current Status: [Registered](#).

Date of Status: 2008-03-18

Filing Date: 2007-07-19

Transformed into a National Application: No

Registration Date: 2008-03-18

Register: [Principal](#)

Law Office Assigned: [LAW OFFICE 110](#)

If you are the applicant or applicant's attorney and have questions about this file, please contact the Trademark Assistance Center at TrademarkAssistanceCenter@uspto.gov

Current Location: [650 -Publication And Issue Section](#)

Date In Location: 2008-03-18

LAST APPLICANT(S)/OWNER(S) OF RECORD

1. [Covidien AG](#)

Address:

[Covidien AG](#)

[Victor von Bruns-Strasse 19](#)

Neuhausen am Rheinfall 8212
Switzerland

Legal Entity Type: Corporation

State or Country of Incorporation: Switzerland

GOODS AND/OR SERVICES

International Class: 041

Class Status: Active

EDUCATIONAL SERVICES, NAMELY, DEVELOPING, ARRANGING, AND CONDUCTING EDUCATIONAL CONFERENCES AND PROGRAMS AND PROVIDING COURSES OF INSTRUCTION IN THE FIELDS OF HUMAN HEALTH, HEALTHCARE, PHARMACEUTICALS, MEDICAL DEVICES, MEDICAL RESEARCH, SURGERY, MEDICAL SCIENCE AND MEDICINE; DISTRIBUTION OF COURSE MATERIALS IN CONNECTION THEREWITH

Basis: 44(e)

First Use Date: (DATE NOT AVAILABLE)

First Use in Commerce Date: (DATE NOT AVAILABLE)

ADDITIONAL INFORMATION

Color(s) Claimed: Color is not claimed as a feature of the mark.

Description of Mark: The mark consists of two block letter Cs, with one reversed so they are facing each other, combined with the designation COVIDIEN.

Foreign Application Number: 50832/2007

Foreign Registration Number: 555921

Foreign Registration Date: 2007-01-23

Country: Switzerland

Foreign Filing Date: 2007-01-23

Foreign Expiration Date: 2017-01-23

MADRID PROTOCOL INFORMATION

(NOT AVAILABLE)

PROSECUTION HISTORY

NOTE: To view any document referenced below, click on the link to "Trademark Document Retrieval" shown near the top of this page.

2008-03-18 - Registered - Principal Register

2008-01-23 - Attorney Revoked And/Or Appointed

2008-01-23 - TEAS Revoke/Appoint Attorney Received

2008-01-01 - Published for opposition

2007-12-12 - Notice of publication

2007-11-29 - Law Office Publication Review Completed

2007-11-29 - Assigned To LIE

2007-10-25 - Approved for Pub - Principal Register (Initial exam)

2007-10-24 - Assigned To Examiner

2007-07-26 - New Application Entered In Tram

ATTORNEY/CORRESPONDENT INFORMATION

Correspondent

Covidien AG

Victor von Bruns-Strasse 19

Neuhausen am Rheinfall 8212 Switzerland

Exhibit D

Thank you for your request. Here are the latest results from the [TARR web server](#).

This page was generated by the TARR system on 2008-08-11 13:24:17 ET

Serial Number: 77235145 [Assignment Information](#) [Trademark Document Retrieval](#)

Registration Number: (NOT AVAILABLE)

Mark



(words only): [C C COVIDIEN](#)

Standard Character claim: No

Current Status: [Final review prior to publication has been completed, application will be published for opposition.](#)

Date of Status: [2008-07-07](#)

Filing Date: [2007-07-20](#)

The Information will be/was published in the Official Gazette on [2008-08-12](#)

Transformed into a National Application: No

Registration Date: (DATE NOT AVAILABLE)

Register: [Principal](#)

Law Office Assigned: [LAW OFFICE 110](#)

Attorney Assigned:
[CAPSHAW DANIEL](#)

Current Location: [650 -Publication And Issue Section](#)

Date In Location: [2008-07-07](#)

LAST APPLICANT(S)/OWNER(S) OF RECORD

1. [Covidien AG](#)

Address:

Covidien AG
Victor von Bruns-Strasse 19
Neuhausen am Rheinfall 8212
Switzerland

Legal Entity Type: Corporation

State or Country of Incorporation: Switzerland

GOODS AND/OR SERVICES

International Class: 001

Class Status: Active

CHEMICALS FOR LABORATORY USE; CHEMICALS AND CHEMICAL ADDITIVES FOR THE MANUFACTURE OF PHARMACEUTICALS, MEDICAL PRODUCTS, FOOD AND MICROELECTRONIC DEVICES; CHEMICALS USED IN THE FIELD OF PROCESS CHROMATOGRAPHY; REAGENTS FOR CHEMICAL OR BIOLOGICAL ANALYSIS; CHEMICAL COMPOSITIONS FOR SOLIDIFICATION AND ABSORPTION OF FLUIDS AND LIQUIDS; CHEMICAL SPILL CLEAN UP KITS COMPRISED PRIMARILY OF CHEMICAL COMPOSITIONS FOR SOLIDIFICATION AND ABSORPTION OF FLUIDS AND LIQUIDS; CHEMICAL ANTI FOG PREPARATIONS

Basis: 44(e)

First Use Date: (DATE NOT AVAILABLE)

First Use in Commerce Date: (DATE NOT AVAILABLE)

International Class: 005

Class Status: Active

PHARMACEUTICALS AND THEIR INGREDIENTS, NAMELY, PREPARATIONS FOR THE TREATMENT OF NEUROLOGICAL, LEARNING, BEHAVIORAL, SLEEPING, ATTENTION DEFICIT AND ATTENTION DEFICIT HYPERACTIVITY DISORDERS, SUBSTANCE ABUSE, COLD AND FLU SYMPTOMS, ALLERGIES, DEPRESSION AND PAIN; MEDICATED SKIN CARE PREPARATIONS; CLEANSING SOLUTIONS FOR MEDICAL AND SURGICAL USE; DISINFECTING HAND AND BODY WASH FOR USE BEFORE SURGERY; SURGICAL PAINTS TO MARK THE HUMAN BODY BEFORE SURGERY; MEDICAL GELS FOR CONDUCTIVITY AND IMAGING PURPOSES; BIO MATERIAL SURGICAL SEALANTS AND ADHESION BARRIERS; TOPICAL HUMAN TISSUE ADHESIVES; MEDICAL AND SURGICAL ANTI-ADHESIVES AND RESORBABLE HYDROPHILIC ADHESION-PREVENTION FILMS; PADS FOR ABSORPTION OF MEDICAL WASTE; CONTRAST MEDIA, DYES AND RADIOISOTOPES FOR MEDICAL IMAGING AND DIAGNOSTIC PURPOSES; CHEMICAL SOLUTIONS TO FILL AND FLUSH CATHETERS; PREFILLED SYRINGES CONTAINING CONTRAST MEDIA FOR IMAGING PURPOSES; SURGICAL AND WOUND DRESSINGS, SPONGES, PADS, AND TAPES; MEDICAL BANDAGES; INCONTINENCE PADS, DIAPERS AND GARMENTS; DIETETIC FOOD AND PREPARATIONS FOR MEDICAL USE; ENTERAL FEEDING PREPARATIONS; NUTRITIONAL AND FOOD SUPPLEMENTS FOR MEDICAL PURPOSES; MEDICAL WAX

Basis: 44(e)

First Use Date: (DATE NOT AVAILABLE)

First Use in Commerce Date: (DATE NOT AVAILABLE)

International Class: 009

Class Status: Active

COMPUTER SOFTWARE AND FIRM WARE FOR USE IN OPERATING ELECTROSURGICAL

GENERATORS, MRI DIAGNOSTIC APPARATUS, SLEEP DIAGNOSTIC APPARATUS AND SLEEP THERAPY APPARATUS; COMPUTER SOFTWARE USED FOR PATIENT RECORD MANAGEMENT; ELECTRONIC THERMOMETERS FOR LABORATORY USE; TEMPERATURE SENSORS AND MONITORS; PROTECTIVE CLOTHING, PROTECTIVE MASKS; NEEDLE AND BLADE COUNTING APPARATUS; ALKALINE BATTERIES

Basis: 44(e)

First Use Date: (DATE NOT AVAILABLE)

First Use in Commerce Date: (DATE NOT AVAILABLE)

International Class: 010

Class Status: Active

A HOUSE MARK FOR MEDICAL AND SURGICAL APPARATUS AND INSTRUMENTS NAMELY; MEDICAL, SURGICAL AND PATIENT HEALTH SENSORS, SCANNERS, DETECTORS, METERS AND MONITORS ALL FOR USE IN MEASURING AND MONITORING THE VITAL FUNCTIONS IN HUMANS AND ANIMALS AND ELECTRODES, CABLES AND LEAD WIRES AS ACCESSORIES THEREFOR; MEDICAL AND THERAPEUTIC PUMPS FOR ENTERAL FEEDING; AIR PUMPS TO BE USED AS PART OF MEDICAL VENTILATION SYSTEMS; DRUG DELIVERY SYSTEMS, AND INFUSION SETS; PAIN MANAGEMENT SYSTEMS PRIMARILY COMPOSED OF ELECTRICAL GENERATORS AND ELECTRODES; MEDICAL IMAGING APPARATUS FOR UROLOGICAL EXAMINATIONS; MEDICAL APPARATUS FOR THE TREATMENT OF PULMONARY DISORDERS AND CONDITIONS, NAMELY, PORTABLE AND STATIONERY OXYGEN THERAPY UNITS PRIMARILY COMPOSED OF AN OXYGEN RESERVOIR, A CONTROL UNIT AND TUBING; MEDICAL VENTILATION AND RESPIRATION SYSTEMS PRIMARILY COMPOSED OF MEDICAL VENTILATORS, MEDICAL RESPIRATORS, INHALERS AND NEBULIZERS; SURGICAL SCRUB SUITS, SURGICAL MASKS; MEDICAL AND SURGICAL GLOVES; APPARATUS FOR DRAWING BLOOD; CONTAINERS AND BAGS FOR MEDICAL WASTE AND BRACKETS THEREFOR; MEDICAL, SURGICAL AND DENTAL NEEDLES AND SYRINGES; MEDICAL NEEDLE HOLDERS AND NEEDLE TRAYS; CANNULAS, SCALPELS AND LANCETS FOR MEDICAL AND SURGICAL USE; BLOOD AND SPECIMEN COLLECTION TUBES, BAGS, CONTAINERS AND TRAYS; GUIDE WIRES FOR MEDICAL AND SURGICAL USE; MEDICAL AND SURGICAL TUBES AND CATHETERS; MEDICAL AND SURGICAL CHEST DRAINAGE APPARATUS; VASCULAR ACCESS SYSTEMS COMPOSED OF DILATORS, RADIALY EXPANDABLE SLEEVES, REDUCERS AND SEALS; VASCULAR COMPRESSION SYSTEMS PRIMARILY COMPOSED OF ELECTRONIC CONTROLLER, TUBING AND MEDICAL LEG GARMENTS; ELASTIC STOCKINGS FOR MEDICAL USE; SEALS FOR MEDICAL BOTTLES, VIALS AND BAGS; SEALS FOR SYRINGES AND MEDICATION CONTAINERS; PATIENT SAFETY RESTRAINTS, NAMELY, HEAD AND BODY RESTRAINTS, HARNESSES AND SURGICAL POSITIONERS; ELECTRIC BLANKETS FOR MEDICAL AND SURGICAL PURPOSES; HOT AND COLD PACKS FOR MEDICAL USE; ENTERAL FEEDING PUMPS, TUBES AND BAGS; INCONTINENCE BED PADS AND BED PROTECTORS; BRONCHIAL, TRACHEAL AND TRACHEOSTOMY TUBES; MEDICAL EQUIPMENT USED IN THE DIAGNOSIS AND TREATMENT OF SLEEP DISORDERS, NAMELY, RECORDING SYSTEMS, MASKS, HEADGEAR AND OXYGEN UNITS; RESUSCITATION APPARATUS AND BAGS; SURGICAL ASPIRATORS AND TUBING THEREFOR, MEDICAL SMOKE EVACUATOR SYSTEMS FOR CAPTURING AND FILTERING SMOKE DURING ELECTROSURGICAL PROCEDURES AND EVACUATOR TOOLS, TUBES AND TIPS TO BE USED THEREWITH; ARGON GAS DELIVERY UNITS FOR MEDICAL USE; BREATHING MASKS FOR SURGICAL PROCEDURES; WOUND DRAINAGE APPARATUS; SURGICAL IMPLANTS, NAMELY, ABSORBABLE AND NON-ABSORBABLE MESH; SURGICAL IMPLANTS COMPRISING ARTIFICIAL MATERIAL; SURGICAL INSTRUMENTS FOR USE WITH IMPLANTS; MEDICAL

THERMOMETERS AND TEMPERATURE PROBE; POWER INJECTORS FOR CONTRAST MEDIA IMAGING INJECTION PROCEDURES; PULSE OXIMETRY SENSORS AND CABLES USED AND SOLD THEREWITH; SUTURES, SUTURE ANCHORS, SUTURE LIGATURES, SUTURING NEEDLES AND DEVICES; ELECTROSURGICAL GENERATORS AND DEVICES AND ELECTRODES TO BE USED THEREWITH; MEDICAL AND SURGICAL VESSEL AND TISSUE SEALING DEVICES; ENDOSCOPIC AND LAPAROSCOPIC INSTRUMENTS AND DEVICES; SURGICAL TROCARS, BALLOON TROCARS, SURGICAL BALLOONS AND BALLOON DISSECTORS; STENTS; BIPOLAR SCISSORS FOR SURGICAL USE; SURGICAL DEVICES IN THE NATURE OF AORTIC PUNCHES; MEDICAL AND SURGICAL INSUFFLATION NEEDLES, LIGATING LOOPS, KNOT PUSHERS, DISSECTORS, CLAMPS, GRASPERS AND RETRACTORS; SURGICAL ANCHORING DEVICES, NAMELY DRILL GUIDES AND BITS; SURGICAL DRILL GUIDE OBTURATORS; SURGICAL CLIP APPLIERS; SURGICAL TISSUE FIXATION DEVICES; MEDICAL AND SURGICAL STAPLERS AND FASTENERS; IRRIGATION SYSTEMS FOR CLEANSING BODY CAVITIES PRIMARILY COMPRISED OF SYRINGE, DISINFECTANT PREPARATION PAD AND PROTECTOR CAP; MEDICAL AND SURGICAL STERILIZATION TRAYS; VEIN HARVEST SYSTEMS AND DEVICES COMPRISED OF BALLOON DISSECTOR AND RETRACTOR

Basis: 44(e)

First Use Date: (DATE NOT AVAILABLE)

First Use in Commerce Date: (DATE NOT AVAILABLE)

International Class: 016

Class Status: Active

PRINTED EDUCATIONAL AND INSTRUCTIONAL MATERIALS, NAMELY, PAMPHLETS, BOOKS AND BOOKLETS CONCERNING HUMAN HEALTH AND DISPENSING OF PHARMACEUTICALS; MEDICAL CHARTING PAPER AND PRINTED MEDICAL LABELS; DISPOSABLE DIAPERS AND TRAINING PANTS

Basis: 44(e)

First Use Date: (DATE NOT AVAILABLE)

First Use in Commerce Date: (DATE NOT AVAILABLE)

International Class: 041

Class Status: Active

EDUCATIONAL SERVICES, NAMELY, DEVELOPING, ARRANGING, AND CONDUCTING EDUCATIONAL CONFERENCES AND PROGRAMS AND PROVIDING COURSES OF INSTRUCTION IN THE FIELDS OF HUMAN HEALTH, HEALTHCARE, PHARMACEUTICALS, MEDICAL DEVICES, MEDICAL RESEARCH, SURGERY, MEDICAL SCIENCE AND MEDICINE; DISTRIBUTION OF COURSE MATERIALS IN CONNECTION THEREWITH

Basis: 44(e)

First Use Date: (DATE NOT AVAILABLE)

First Use in Commerce Date: (DATE NOT AVAILABLE)

ADDITIONAL INFORMATION

Color(s) Claimed: The color(s) blue is/are claimed as a feature of the mark.

Description of Mark: The mark consists of two block letter Cs, with one reversed so that they are facing each other, combined with the designation COVIDIEN, and all of these elements are in the same shade of blue.

Foreign Application Number: 50833/2007

Foreign Registration Number: 555922

Foreign Registration Date: 2007-01-23

Country: Switzerland

Foreign Filing Date: 2007-01-23

Foreign Expiration Date: 2017-01-23

MADRID PROTOCOL INFORMATION

(NOT AVAILABLE)

PROSECUTION HISTORY

NOTE: To view any document referenced below, click on the link to "Trademark Document Retrieval" shown near the top of this page.

2008-07-23 - Notice of publication

2008-07-07 - Law Office Publication Review Completed

2008-07-02 - Assigned To LIE

2008-07-02 - Approved for Pub - Principal Register (Initial exam)

2008-06-13 - Teas/Email Correspondence Entered

2008-06-13 - Communication received from applicant

2008-06-13 - TEAS Request For Reconsideration Received

2008-05-06 - Final refusal mailed

2008-05-06 - Final Refusal Written

2008-04-16 - Teas/Email Correspondence Entered

2008-04-16 - Communication received from applicant

2008-04-16 - TEAS Response to Office Action Received

2008-01-23 - Attorney Revoked And/Or Appointed

2008-01-23 - TEAS Revoke/Appoint Attorney Received

2007-10-25 - Notification Of Non-Final Action E-Mailed

2007-10-25 - Non-final action e-mailed

2007-10-25 - Non-Final Action Written

2007-10-24 - Assigned To Examiner

2007-07-25 - New Application Entered In Tram

ATTORNEY/CORRESPONDENT INFORMATION

Correspondent

Covidien AG

Victor von Bruns-Strasse 19

Neuhausen am Rheinfall 8212 Switzerland

Exhibit E

Wall Street Journal

7/29/08

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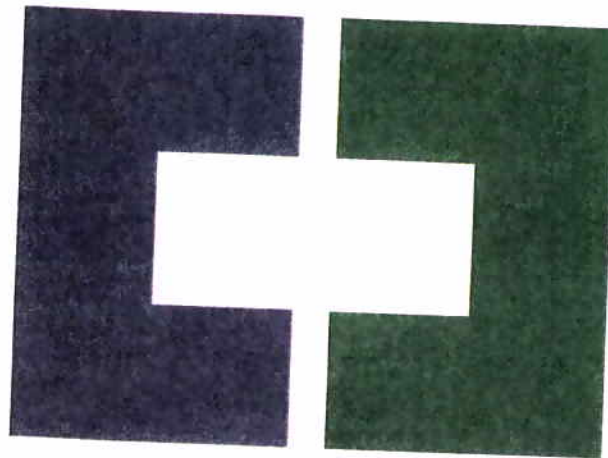
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